REMARKS

This responds to the Final Office Action mailed on February 18, 2009.

Claims 1, 6, 9-11, 17, 18, 20-30, and 32-36 are amended, no claims are canceled, and claim 37 is added; as a result, claims 1-37 are now pending in this application. Applicant submits that the amendments and additions to the claims are fully supported by the specification as originally filed, and no new matter has been added.

§ 112 Rejection of the Claims

Claims 1 and 35 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement. Applicant respectfully traverses this rejection.

In particular, Applicant respectfully submits that support for claims 1 and 35 can be found through out the specification. As an example, Applicant respectfully refers the examiner to paragraphs 0068-0071 of the published application, which describe embodiments that stream content "for a maximum or total authorized time duration." Published Application at ¶ 0068. As an example:

> ...the digital rights network monitors the time duration for any one or more sessions during which the content distributor 20 streams content to the content consumer 22 and maintains a current delivered time duration that is stored with the user rights 62.

Published Application at ¶ 0068, lines 11-15. As illustrated in FIGS. 1-3, the digital rights network 39 includes a digital rights server 36. As described in the Application, the "digital rights server 36 .... is optionally included to define and store access rights to content of the content provider 16, *to perform digital rights management*, to encrypt content, and to manage and distributed (sic) product keys." Published Application at ¶ 0022, lines 12-17 (emphasis added). Applicant respectfully submits that digital rights managements would commonly be understood to include controlling access and delivery of managed content. As such, a portion of such control may include timing the delivery of content to a content consumer, as recited in claims 1 and 35. As such, Applicant respectfully submits that based on the description of the digital rights

server, the illustrations provided in FIGS. 1-3, and the description of the functionality of the digital rights network, one of ordinary skill in the art would be provided with sufficient information to implement the claimed subject matter.

Thus, Applicant requests reconsideration and withdrawal of the § 112 rejections of these claims.

Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. As a first point, Applicant respectfully submits that there is nothing inherent to the claimed embodiments that prevents both the media server and the digital rights server from timing the delivery time of content. Nonetheless, in order to clarify the claims, Applicant has amended claim 1 to refer to the digital rights server monitoring the delivery of content. Support for the amended claim language can be found at least at paragraph 0068 of the Published Application, which states that "the digital rights network 39 monitors the delivered time duration for any one or more sessions during which the content distributor 20 streams content to the content consumer 22 and maintains a current delivered time duration that is stored with the user rights 62." For example, the time of delivery of the content may be periodically reported from the media server to the digital rights server (e.g., as recited in claim 5). As another example, the content consumer may interface with the digital rights server via a digital rights agent to report the delivery time consumed (e.g., as recited in claim 11 and illustrated in FIG. 2).

Thus, Applicant requests reconsideration and withdrawal of the § 112 rejections of claim 5.

Claims 6, 10, and 25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully submits that the claims as presently amended overcome these rejections and requests reconsideration and withdrawal of these § 112 rejections of claims 6, 10, and 25.

§ *103 Rejection of the Claims*

Claims 1-5 and 7-36 were rejected under 35 U.S.C. § 103(a) as being obvious over Hans et al. (U.S. Publication No. 2002/0120577; hereinafter "Hans") in view of Garfinkle (U.S.

Publication No. 2001/0037506; hereinafter "Garfinkle"), further in view of Seago et al. (U.S. Publication No. 2004/0054923; hereinafter "Seago"). Because a *prima facie* case of obviousness has not been properly established, Applicant respectfully traverses the rejection.

Concerning independent claims 1, 17, 28, 35, and 36:

Applicant cannot find in the cited portions of Hans, Garfinkle, or Seago any disclosure, teaching, or suggestion of "determining whether the remaining available delivery time exceeds a preset amount of time," as presently recited in claim 17, and similarly recited in claims 28 and 36.

Instead, it appears that Hans refers to conditional delivery based merely on licenses (*see* Hans at ¶ 0029). For example, Hans states:

> If the user is not licensed (step 86), rights manager 40 may invite the user to purchase a license (step 88). If the user purchases a license (step 90), rights manager 40 updates the user's personal profile 46 with the content identifier associated with the licensed digital work (step 92); otherwise, the user is denied access to the requested digital content (step 94).

Hans at ¶ 0029, lines 8-14. The licenses referred to in Hans act to permit or deny access, but are not based on the amount of delivery time available.

In fact, the Final Office Action relied upon Garfinkle to reject this portion of these claims (*see* Final Office Action at p. 5 and p. 8). However, it appears that Garfinkle delivers content and decrements a set period of clock time with no consideration of the amount of time left or approval of delivery based on such consideration (*see* Garfinkle at ¶ 0014). For example, Garfinkle states:

> In a specific embodiment of the invention the limit is a set period of clock time, for example twenty-four hours. Here, the processor stores a value equal to the set period (e.g. twenty-four hours) associated in the memory with the user address. The processor 24 starts transmitting the product ordered as a data stream from the RAM storage 12, inserting the address code of the user who ordered the product. A processor clock decrements the set period, and, at the end of the period, when the memory address is periodically read, the decremented value is interpreted by the processor 24 as a signal to stop further transmission of the product to that address.

Garfinkle at ¶ 0014, lines 8-19.

Furthermore, Applicant respectfully submits that Seago is silent on the use of a time quota or allotment.

With respect to independent claims 1 and 35, Applicant cannot find in the cited portions of Hans, Garfinkle, or Seago any disclosure, teaching, or suggestion of "wherein the delivery of the content to the content consumer is conditional upon there being more than a preset amount of delivery time available to the content consumer and wherein the delivery of the content is monitored by the digital rights server..." as presently recited in claim 1, and similarly recited in claim 35.

In particular, as discussed above, Applicant respectfully submits that Hans does not refer to conditional access based on there being more than a preset amount of delivery time available. Instead, Hans appears to use licenses to permit or deny access. Moreover, neither Garfinkle nor Seago appear to refer this type of conditional processing.

Thus, because the references do not appear to disclose or describe all of the subject matter of independent claims 1, 17, 28, 35, and 36, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning remaining dependent claims 2-16, 18-27, and 29-34

The dependent claims 2-16, 18-27, and 29-34 depend from independent claims 1, 17, and 28, either directly or indirectly, and accordingly incorporate the limitations of each of these independent claims. These dependent claims are accordingly believed to be patentable for at least the reasons stated herein. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable. Thus, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Claim 6 was rejected under 35 U.S.C. § 103(a) as being obvious over Hans in view of Garfinkle, further in view of Seago, further in view of Lagerweij et al. (U.S. Publication No. 2003/0217163; hereinafter "Lagerweij"). Applicant respectfully traverses this rejection.

By introducing Lagerweij in order to reject claim 6, Applicant respectfully submits that the Final Office Action impliedly concedes that Hans, Garfinkle, and Seago fail to disclose the aspects of claim 6.

Applicant cannot find in the cited portions of Legerweij any description, teaching, or suggestion of "wherein further delivery is denied after a certain position within the media has been reached," as recited in claim 6. Instead, the cited portion of Lagerweij merely states:

> ...A business rule may e.g. relate to content duration, i.e. access to a content stream 8 is allowed only for a limited time, after which access is blocked. One could grant a user employing a user device 4 access to a content stream 8 for the next 12 hours for example. The duration can be specified on a per second base, so pay per minute is perfectly possible. Another business rule may relate to content expiration, i.e. access to the content stream 8 is or can be allowed till a predefined point in time. One could grant an end-user employing a user device 4 access to the content stream 8 till for example 12 Sep. 2002, 12:45 PM.

Lagerweij at ¶ 0040, lines 24-35. As can be seen, the cited portion of Lagerweij only refers to using a specific period (i.e., 12 hours) or an expiration time (i.e., "12 Sep. 2002, 12:45 PM") to control license expiration. This is not the same as using a "certain position within the media" to deny further delivery, as recited in claim 6.

Thus, because Legerweij fails to describe or disclose all of the elements of claim 6, Applicant respectfully submits that no *prima facie* case of obviousness has been established and requests reconsideration and withdrawal of the basis of this rejection of claim 6.

New Claim 37

Claim 37 has been added in this response. Applicant respectfully submits that support for claim 36 can be found throughout the originally-filed specification. For example, support for claim 36 can be found at least on pages 18 and 19, ¶¶ 0040-0043. As such, Applicant respectfully submits that new claim does not introduce any new matter. Claim 37 recites

elements such as a "determining a remaining available delivery time of the content for the content consumer" and "determining whether the remaining available delivery time exceeds a preset amount of time," which as discussed above are not found in the cited references. Thus, Applicant respectfully submits that these claims are allowable over the current references and request notification of the same.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned representative at (612) 371-2134 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date April 20, 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 20, 2009.

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